

Compactors used in recycling operations do not qualify as exempt pursuant to 86 Ill. Adm. Code 130.335. Compactors do not reduce, prevent, or eliminate air or water pollution or treat or dispose of potentially harmful pollutants. (This is a GIL.)

January 30, 2001

Dear Xxxxx:

This General Information Letter clarifies the Department's December 5, 2000 response to your letter dated July 26, 2000. Upon receipt of this letter you should disregard the December 5, 2000 letter. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your July 26, 2000 letter, you stated and made inquiry as follows:

We are an Illinois corporation in the waste compactor business and are currently selling and leasing waste compactors to Lessees throughout Illinois. It is our understanding that under certain circumstances, the compactors qualify for Pollution Control Facilities sales tax exemption under the above referenced code. Enclosed are two (2) scenarios on which we would like a Private Letter Ruling to confirm this tax-exempt status.

- The compactor with a deodorizer is purchased COMPANY from the manufacturer. The compactor is then installed and sold/leased to the Lessee/End-User by COMPANY.
- The compactor without a deodorizer is purchased by COMPANY from the manufacturer. The installer hired by COMPANY adds a deodorizer to the compactor. The compactor, with deodorizer, is then installed and sold/leased to the Lessee/End-User by COMPANY.

Since the deodorizers are in place for the end-user, it is our position the compactors would be exempt from sales tax in either of the above scenarios. Please issue a Private Letter Ruling on the above situations.

Please be advised that Section 3 of the Illinois Use Tax Act (35 ILCS 105/3) imposes a tax upon the privilege of using tangible personal property in Illinois purchased at retail from retailers. Retailers incur Retailers' Occupation Tax liability upon their gross receipts from sales of tangible personal property for use in this State. The definition of use includes the purchase and utilization of

assets such as the waste compactors mentioned in your inquiry. Therefore, sales of waste compactors are generally taxable, unless an exemption can be documented.

Lessors of tangible personal property, including compactors, in Illinois under true lease agreements are deemed to be the users of the items they purchase for rental purposes. True leases generally have no buy out provisions at the close of the leases. If buy out provisions do exist, they must be fair market value buy out options in order to maintain the character of the true leases. Lessors under true leases incur Use Tax liability on their cost price of tangible personal property purchased for rental purposes. See 86 Ill. Adm. Code 130.2010, enclosed. The only exception is automobiles rented for one year or less, which are subject to the Automobile Renting and Use Tax found at 35 ILCS 155/1 et seq.

As a general proposition, when a lessor purchases machinery or equipment that he leases to a lessee who uses it in a manner that is authorized as exempt under the Retailers' Occupation and Use Tax Acts (35 ILCS 105/1 et seq. and 120/1 et seq.), the sale to the purchaser-lessor will be exempt from tax. A supplier may exclude such sales from his taxable gross receipts provided the purchaser-lessor provides to him a properly completed exemption certificate and the information contained thereon would support an exemption if the sale were made directly to the lessee.

It is impossible to make a determination from the limited information in your inquiry whether the compactors you mention qualify for any exemption. Information on how your customers utilize the items you sell or lease would be required for such purpose. However, we will provide the following general information, which we hope will be helpful.

We have enclosed a copy of 86 Ill. Adm. Code 130.335 concerning Pollution Control Facilities. The pollution control facilities exemption extends to "any system, method, construction, device or appliance appurtenant thereto sold or used or intended for the primary purpose of eliminating, preventing, or reducing air and water pollution as the term "pollution" is defined in the Environmental Protection Act (415 ILCS 5/1 et seq.), or for the primary purpose of treating, pretreating, modifying or disposing of any potential solid, liquid or gaseous pollutant which if released without such treatment, pretreatment, modification or disposal might be harmful, detrimental or offensive to human, plant or animal life, or to property." It has been the Department's long-standing position that when compactors are used as recycling equipment, they confer an economic benefit to users and thus do not qualify for the pollution control exemption. The recycling process does not constitute elimination, prevention or reduction of pollution. In general, compactors do not qualify for this exemption because they do not prevent or reduce air or water pollution, or treat, modify or dispose of potentially harmful pollutants. The fact that these machines may change or reduce the volume of waste does not constitute the prevention or reduction of air or water pollution.

However, waste compactors sold containing deodorizing devices as necessary component parts may qualify if the air pollution control function of the deodorizing devices allow the machines to be used primarily for the purpose of eliminating, preventing or reducing air pollution. In general, purchases of compactors for the purpose of leasing that do not contain a deodorizing device would not qualify for exemption in situations where a deodorizing device is subsequently added by an installer. The original purchase of the compactor would be taxable. The subsequent purchase of the deodorizing device could qualify for the exemption.

When a person purchases tangible personal property, such as compactors or deodorizers, for the purpose of resale, such purchases can be made tax-free pursuant to the resale exemption so long as a properly completed Certificate of Resale is submitted to the vendor. The Certificate of Resale must contain the information listed in 86 Ill. Adm. Code 130.1405. When the tangible personal property is sold to the end-user for use or consumption, the sale is taxable unless an

exemption can be documented. It is important to note that compactors containing deodorizers cannot qualify for the pollution control exemption if used primarily in recycling process situations because, as noted above, machinery and equipment used in recycling is considered to be used primarily for the economic benefit of the user.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

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